

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEALS No. 120 to 141 of 1990

With

CROSS FIRST APPEALS NO. 2521 to 2526 of 1992

With

CROSS OBJECTIONS NO. 152 to 167 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? No

2. To be referred to the Reporter or not? No

3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No @@
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5. Whether it is to be circulated to the Civil Judge?

No

OFFICER ON SPECIAL DUTY (LAND ACQUISITION)

Versus

NARANBHAI MANGALBHAI

Appearance:

FIRST APPEALS NO. 120 to 141 of 1990

Mr. U.A.TRIVEDI, A.G.P. for the appellant.

Mr. Pranav G.Desai & Mr. Mukesh S.Shah for
claimants

MR M.G.NAGARKAR for Respondent-Acquiring Body

CROSS FIRST APPEALS NO. 2521 to 2526 of 1992

MR MR SHAH for the appellants

MR BD DESAI, A.G.P. for respondent no.1

MR MG NAGARKAR for respondent no.2

CROSS OBJECTIONS NO.152 to 167 of 1998

MR PRANAV G.DESAI for cross-objectors

MR BD DESAI, A.G.P.for respondent no.1

MR MG NAGARKAR for respondent no.2.

CORAM : MR.JUSTICE J.M.PANCHAL and

MR.JUSTICE M.H.KADRI

Date of decision: 16/12/98

ORAL JUDGEMENT

(Per : Panchal, J.)

All these appeals and cross-appeals, which are filed under section 54 of the Land Acquisition Act, 1894 read with section 96 of the Code of Civil Procedure, 1908 as well as cross-objections which are filed under the provisions of Order-41 Rule-22 of the Code arise out of the common judgment and award dated April 13, 1989 rendered by the learned 2nd Extra Assistant Judge, Bharuch, in Land Acquisition Reference Cases No. 200/84 to 217/84 as well as Land Acquisition Reference Cases No.219/84 to 221/84, which were consolidated with Land Acquisition Reference Case No. 218/84 and, therefore, we propose to dispose of all these appeals, cross-appeals and cross-objections by this common judgment.

2. Gujarat Industrial Development Corporation had proposed to the State Government on June 22, 1978 to acquire lands admeasuring 54 Hectares situated at village Bholav for the public purpose of Bharuch Industrial Estate expansion. On receipt of the proposal, State Government was satisfied that the lands of village Bholav

were likely to be needed for the said public purpose. Accordingly, notification under section 4(1) of the Land Acquisition Act, 1894 ("the Act" for short) was issued which was published in Government Gazette on October 3, 1978. The said notificatioin was subsequently amended and the amended notification was published in Government Gazette on June 21, 1979. The land owners whose lands were mentioned in the notification issued under section 4(1) of the Act were served with notices. They had filed objections against proposed acquisition. After taking into consideration the objections filedby the land owners, Officer on Special Duty, Land Acquisition, Ahmedabad had submitted his report to the State Government as contemplated by Section 5-A(2) of the Act. On consideration of the report submitted by the Officer on Special Duty, Land Acqusition, State Government was satisfied that the lands specified in the notification issued under section 4(1) of the Act were needed for public purpose of the Bharuch Industrial Estate Expansion. Therefore, declaration under section 6 of the Act was made which was published in Official Gazette on September 21, 1981. The interested persons were thereafter served with notices under section 9 of the Act for determination of compensation. Having regard to the materials placed before him, the Land Acquisition Officer by award dated November 29, 1983 offered compensation to the claimants at the rate of Rs. 600/per Are. It may be stated that before the Land Acquisition Officer, claimants had claimed compensation at the rate of Rs. 6000/- per Are. The claimants were of the opinion that the offer made by the Officer on Special Duty, Land Acquisition regarding compensation was inadequate and, therefore, they did not accept the award. The claimants made written applications requiring the Officer on Special Duty (Land Acquisition) to refer the matter to the Court for the purpose of determination of compensation. Accordingly, references were made to the District Court at Bharuch, which were numbered as Land Acquisition Reference Cases No. 200/84 to 221/84. All these cases were consolidated with Land Acquisition Reference Case No.218/84 and common evidence was led by the claimants in Land Acquisition Reference Case No.218/84. In reference applicatioins it was claimed by the claimants that the acquired lands were levelled and had also building potentiality and, therefore, enhanced compensation ought to have been awarded to them. In those applicatioins, it was pleaded that village Bholav is quite near Bharuch town and as National Highway No.8 passes through the village, additional compensation should be awarded to them. It was averred in those applications that even before publication of notification

under section 4(1) of the Act, several industries had come-up near the acquired lands and, therefore, the claimants were entitled to compensation on the basis of per sq. foot and not on the basis of per Are. By filing reference applications, the claimants claimed compensation at the rate of Rs. 6000/- per Are.

3. The referor contested the reference applications by filing written statement at Exh.5. In the reply, it was pleaded that after receipt of notices under section 9 of the Act, the claimants had not made any application nor cited sale instances in support of fixation of higher compensation, but had unconditionally accepted the amount awarded and, therefore, the reference applications were liable to be dismissed. It was claimed that the claim for additional compensation was not maintainable in view of the provisions of Section 25 of the Act. What was emphasised was that compensation offered by the Special Land Acquisition Officer was just and proper having regard to the situation of the lands and, therefore, reference applications should be dismissed.

4. The acquiring body i.e. G.I.D.C. contested the reference applications by filing reply at Exh.10. In the said reply, the acquiring body averred that as the amount of compensation offered by the Special Land Acquisition Officer was accepted by the claimants, the reference applications were not maintainable. It was pleaded that having regard to the yield of the lands acquired as well as potentiality, the offer made by the Special Land Acquisition officer cannot be said to be inadequate so as to entitle the claimants to claim enhanced compensation. What was claimed by the acquiring body was that in view of the insufficient evidence led by the claimants, they were not entitled to compensation at the rate of Rs. 6,000/- per Are and reference applications should be dismissed.

5. In view of the pleadings of the parties, the Reference Court raised necessary issues for determination. On behalf of the claimants, witness Naranbhai Mangalbhai Patel was examined at Exh.42. The said witness stated that the acquired lands formed one compact block and in view of the potentiality as well as quality of the acquired lands, the claimants were entitled to compensation at the rate of Rs. 6,000/- per Are. The witness produced necessary entries relating to sale transactions entered in the register maintained under the provisions of the Registration Act, 1908 at Exhs. 44 to 47 to substantiate the claim that the claimants were entitled to compensation at the rate of

Rs. 6,000/- per Are. The witness produced certified copy of entry at Exh. 43 relating to sale transaction dated October 29, 1975 of Survey No. 80/A of village Bholav by which the wife of the witness had sold land admeasuring 4381 sq.yards for a sum of Rs. 47,999/-. The witness further produced earlier award made by the Land Acquisition Officer in the case of DUDH DHARA DAIRY at Exh.57 in support of claim of the claimants for enhanced compensation. The Reference Court considered the oral as well as documentary evidence adduced by the claimants and held that the earlier award made by the Land Acquisition Officer was subject matter of references and, therefore, was not a relevant piece of evidence for the purpose of ascertaining market value of the lands acquired in the present case. The Reference Court heavily relied upon certified copy of entry relating to sale dated April 19, 1979 of Survey No. 96/1 situated at village Bholav, produced at Exh.45, which indicated that the land admeasuring 6000 sq.yds. was sold for a sum of Rs.30000/- and held that the rate indicated by the said sale deed was Rs. 21/- per sq.mt. The Reference Court also noted that the acquired lands formed a compact block and, therefore, 20% should be deducted from the price indicated in Exh.45, but having regard to the development in the surrounding area, increase in price of land at the rate of 15% per annum should be considered. In the ultimate analysis, the Reference Court held that the claimants would be entitled to compensation at the rate of Rs.19.55 ps. per sq.mt. i.e. Rs. 1,955/per Are by the impugned common award. In the operative part of the order, the Reference Court held that the claimants are entitled to additional compensation calculated at the rate of 12% per annum on the market value determined for the period commencing on and from the date of publication of the notification under section 4(1) of the Act till the date of the award of the Collector, as no cogent evidence was produced by the acquiring authorities to indicate that possession of the lands acquired was taken in January, 1980. The Reference Court also directed the appellant to pay interest at the rate of 9% for the first year from the date of the award and for subsequent period till the date of payment at the rate of 15% per annum on the amounts envisaged under sections 23(1-A) and 23(2) of the Act. The above-referred to directions contained in the common award, have given rise to present appeals, cross-appeals and cross-objections.

6. Mr. U.A.Trivedi, learned A.G.P. and Mr. M.G.Nagarkar, learned Counsel appearing for the acquiring body submitted that certified copies of entries relating to sales as entered into the register maintained under

the provisions of the Registration Act, 1908 should not have been referred to or relied on when the claimants had not examined either vendor or vendee or scribe of the deeds and, therefore, common award should be set aside. It was pleaded that certified entries of sale deeds produced by the claimants at Exhs. 43 to 47 are in respect of non-agricultural lands and, therefore, those instances should not have been taken into consideration for the purpose of determining market value of the agricultural lands acquired in the present case. It was claimed that determination of market value of the lands under acquisition on the basis of Exh.45 is illegal and, therefore, the appeals should be allowed. What was highlighted was that the claimants had failed to adduce any cogent and reliable evidence regarding market value of the lands acquired and, therefore, the Reference Court was not justified in awarding compensation to the claimants at the rate of Rs. 1,955/- per Are. It was vehemently pleaded by the learned Government Counsel that the Reference Court was not justified in awarding an amount calculated at the rate of 12% per annum on market value of the lands acquired for the period commencing on and from the date of publication of the notification under section 4(1) of the Act till the date of award, as possession of the lands acquired was taken earlier and, therefore, the impugned award should be modified. It was also pleaded that direction to pay interest at the rate of 9% per annum for the first year and for subsequent period till the date of payment at the rate of 15% per annum on the amounts envisaged under sections 23(1-A) and 23(2) of the Act should be set aside in view of the decision of the Supreme Court in State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today, 1995(2) S.C. 583.

7. M/s. Pranav G.Desai and Mukesh R.Shah, learned Counsel for the claimants contended that Exh.43 which is entry relating to sale dated October 29, 1975 of Survey No. 80/A indicates that the market value of agricultural lands situated at village Bholav was Rs. 1310/- per Are and, therefore, compensation determined at the rate of Rs. 1955/- per Are for the disputed lands in respect of which notification under section 4(1) of the Act was issued on June 21, 1979 cannot be said to be excessive at all. On behalf of the claimants it was asserted that witness Naranbhai Mangalbhai Patel was present when Exh.43 was executed by his wife Manjulaben and as he had also personal knowledge of the transaction, Exh.43 should be taken into consideration for the purpose of determining market value of the lands acquired in the present case. What was asserted was that determination of compensation by the Reference Court cannot be said to

be exorbitant so as to call for interference of the Court in the present appeals. Learned Counsel for the claimants vehemently submitted that in view of the satisfactory evidence led by the claimants regarding market value of the lands acquired as on June 21, 1979, the claimants should be awarded compensation at the rate of Rs. 2500/per Are and, therefore, cross appeals as well as cross objections filed by the claimants should be allowed. Learned Counsel for the claimants further submitted that the compensation in excess of the sum awarded by the Special Land Acquisition Officer ought to have been paid to the claimants with interest at the rate of 9% per annum from the date on which possession of the lands was taken till the date of payment of excess amount in the Court and not from the date of the award.

8. We have heard the learned Counsel for the parties at length and we have also taken into consideration the evidence on record. On behalf of the claimants, witness Naranbhai Mangalbhai Patel was examined at Exh.42. However, neither oral nor documentary evidence was led either on behalf of the appellant or acquiring body to establish market value of the lands acquired as on the date of publication of notification under section 4(1) of the Act. The witness, who was examined on behalf of the claimants, had produced certified copies of entries mentioned in the register of sales maintained under the provisions of the Registration Act, 1908 at Exhs. 44 to 47, but neither the vendor, nor vendee nor scribe of the deeds was examined by the claimants to prove the nature of transactions covered by those entries. It was not proved by the claimants that the transactions reflected in the entries produced at Exhs. 44 to 47 were bonafide transactions or that the lands which were subject matter of those sales were similar to the lands acquired or adjacent to the lands acquired. It was also not established that the acquired lands possessed similar advantageous features as were available in the case of lands covered by those sale instances. These relevant features cannot be ignored by the Court while determining compensation on the basis of sale transactions relating to other lands. In order to prove all these relevant features, it was necessary for the claimants to examine either the vendor or vendee or in any case scribe of the deeds. Section 51-A of the Act only dispenses with production of original sale deeds and directs to receive certified copy, but marking of certified copy is per se not admissible in evidence unless it is duly proved and the witnesses i.e. vendors or vendees are examined. This principle has been repeated in catena of decisions of the Supreme Court. In view of this settled legal

position, we are of the opinion that the Reference Court committed error in relying upon Exh.45 for the purpose of ascertaining market value of the lands acquired in the present case when neither the vendor nor vendee of Exh.45 was examined to present the relevant features.

9. However, on this ground, reference applications cannot be rejected because the claimants have produced on record at Exh.43 an entry from the register of sale maintained under the provisions of the Registration Act, 1908 relating to sale of survey no. 80/A situated at village Bholav. Exh.43 shows that the land admeasuring 4381 sq.mts. was sold for a sum of Rs. 47,999/- by a deed dated October 29, 1975. It may be stated that sale deed was executed by Smt.Manjulaben, who is wife of witness Naranbhai Mangalbhai Patel. The witness has clearly stated that he has personal knowledge about the contents of the sale deed dated October 29, 1975. The witness also asserted that the land which was subject matter of sale was situated at a distance of about 100 to 300 Meters from the acquired lands and fertility of the lands acquired was similar to the land mentioned in Exh.43. It was also claimed by the witness that the acquired lands had potentiality for building purpose. It is relevant to note that though the witness was searchingly cross-examined on behalf of the appellant as well as acquiring body, nothing could be elicited from the said witness to show that the land which were subject matter of sale Exh.43, was superior in quality than the acquired lands or that the acquired lands had disadvantageous features compared to the land mentioned in Exh.43. Therefore, Exh.43 can be taken into consideration for the purpose of ascertaining market value of the lands acquired in the present case. The contents of certified copy produced at Exh.43 read with oral evidence of witness Naranbhai Mangalbhai Patel would indicate that the land which was subject matter of sale dated October 29, 1975 was not used for agricultural purpose, but it was an instance of sale of land which was already converted into non-agricultural land. Therefore, appropriate deduction will have to be made for the purpose of ascertaining market value of the agricultural lands situated at village Bholav as on October, 1975. Having regard to the facts and circumstances of the case, we are of the opinion that it would be just and necessary to deduct 1/3rd amount for the purpose of ascertaining market value of agricultural lands situated at village Bholav as on October, 1975, which would come to Rs. 874/- per Are. However, Exh.43 shows that sale had taken place on October 17, 1975; whereas notification under section 4(1) of the Act in the present case was published

on June 21, 1979 and, therefore, reasonable rise in price of the lands will have to be considered for the purpose of ascertaining market value of the lands acquired. Moreover, the evidence of witness Naranbhai Mangalbhai patel shows that there was residential as well as industrial development near the acquired lands and, therefore, potentiality of the lands acquired for the building purpose and/or industrial purpose also will have to be taken into consideration while ascertaining market value of the acquired lands. On the facts and in the circumstances of the case, we are of the opinion that interest of justice would be served if rise in price of the lands at the rate of 15% per annum is considered because of time lag between the sale covered by Exh.43 and the notification issued under section 4(1) of the Act for acquiring lands in question as well as potentiality of the lands acquired. Therefore, in our view, the claimants would be entitled to compensation at the rate of Rs. 1500/- per Are.

10. Though the claimants have filed cross appeals as well as cross-objections claiming compensation at the rate of Rs. 2500/- per Are, no cogent and reliable evidence is produced by them to establish that the market value of the lands acquired was Rs. 2500/- per Are as on June 29, 1979. But for the deposition of Mr. Naranbhai M. Patel, Court would not be justified in relying upon even Exh.43 for the purpose of determining market value of the lands acquired in the present case. The award of the Special Land Acquisition Officer produced by the claimants at Exh.57 is rightly not relied upon by the Reference Court, as it is subject matter of reference before competent court. So far as entries relating to sales are concerned, the claimants had not examined either vendor or vendee or scribe of the deeds and, therefore, those instances cannot be relied upon for the purpose of determining market value of the lands acquired in view of the decision of the Supreme Court rendered in the case of SPECIAL DEPUTY COLLECTOR AND ANOTHER v. K.S.RAO AND OTHERS, AIR 1997 S.C. 2625. Thus, the claimants having failed to adduce satisfactory evidence to prove their claim that the market value of the lands acquired was Rs. 2500/- per Are on the date of publication of notification under section 4(1) of the Act, cross-objections as well as cross appeals cannot be entertained and are liable to be dismissed.

11. The Reference Court has directed that the claimants would be entitled to additional amount calculated at the rate of 12% per annum on the market value determined on and from the date of publication of

notification issued under section 4(1) of the Act till the date of the award of the Collector, as it was not established that possession of the lands acquired was taken in January 1980, In our opinion, this finding recorded by the Reference Court cannot be upheld in view of the cogent evidence on record, which clearly establishes that possession of the lands acquired was taken on January 1, 1980. In Reference Applications it is specifically mentioned that possession of the lands acquired was taken on January 1, 1980 and this statement made in the reference applications is not challenged by the claimants. Moreover, witness Naranbhai Mangalbhai Patel, who was examined on behalf of the claimants, has clearly admitted in his evidence that possession of the lands acquired was taken in the month of January, 1980. Under the circumstances, the Reference Court was not justified in holding that the fact that possession of the acquired lands was taken in the month of January, 1980, was not established. As possession of the lands acquired was taken on January 1, 1980, the claimants would be entitled to additional compensation as contemplated by section 23(1-A) of the Act for the period commencing from June 21, 1979 which is the date of publication of notification under section 4(1) of the Act till the date of taking possession of the lands acquired which is January 1, 1980 and not from June 21, 1979 to the date of the award as held by the Reference Court.

12. In the operative part of the impugned judgment and award, the Reference Court has ordered that the acquiring authorities shall pay additional compensation to the claimants as shown in column 11 with running interest at the rate of 9% per annum for the first year from the date of award and for subsequent period till the date of payment with running interest at 15% per annum with proportionate costs. A bare look at column 11 of the Schedule forming part of the impugned award makes it evident that the additional compensation determined by the Reference Court as payable also includes solatium payable on the additional amount of compensation as well as interest at the rate of 12% on the additional compensation. Therefore, direction to pay interest on the amounts envisaged by sections 23(1-A) and 23(2) of the Act is given by the Reference Court while rendering the award. Such a direction could not have been given in view of the judgment of the Supreme Court rendered in the case of State of Maharashtra v. Maharau Srawan Hatkar, Judgment Today 1995(2) SC 583. The pertinent observations made by the Supreme Court in Para-7 of the reported decision are as under :

"It would thus be seen that the additional amounts envisaged under sub-ss.(1-A) and (2) of S.23 are not part of the component of the compensation awarded under sub-s.(1) of s.23 of the Act. They are only in addition to the market value of the land. The payment of interest also is only consequential to the enhancement of the compensation. In a case where the Court has not enhanced the compensation on reference, the Court is devoid of power to award any interest under S.28 or the spreading of payment of interest for one year from the date of taking possession at 9% and 15% thereafter till date of payment into the Court as envisaged under the proviso."

Therefore, operative part of the order in so far as it directs the appellants to pay interest at the rate of 9% for the first year from the date of award and for subsequent period till the date of payment at the rate of 15% per annum will have to be set aside in so far as amounts envisaged under sections 23(1-A) and 23(2) of the Act are concerned. The operative part of the award also shows that a direction has been given by the Reference Court to the appellants to pay additional compensation to the claimants with running interest at the rate of 9% from the date of the award till the date of payment of excess amount into Court. Section 28 of the Act provides that if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine per centum per annum from the date on which he took possession of the land to the date of payment of such excess into Court. As possession of the lands acquired was taken on January 1, 1980, the claimants would be entitled to interest at the rate of 9% per annum on the additional amount of compensation awarded by the Court for one year from the date of taking possession of the lands acquired and at the rate of 15% per annum after expiry of period of one year from the date on which possession was taken, till the date of payment of additional compensation into the Court. Therefore, the said direction given by the Reference Court will have also to be modified.

For the foregoing reasons, the appeals, cross-appeals and cross-objections are partly allowed. It is held that the claimants would be entitled to

compensation at the rate of Rs. 1500/- per Are i.e. Rs. 15/- per sq.mt. It is held that the claimants would be entitled to additional amount of compensation at the rate of 12% per annum under section 23(1-A) of the Land Acquisition Act, 1894 from June 21, 1979 to January 1, 1980. It is further held that the claimants shall not be entitled to interest on the amounts envisaged under sections 23(1-A) and 23(2) of the Act. It is also held that the claimants would be entitled to interest at the rate of 9% per annum on the additional amount of compensation for one year from the date of taking possession of the lands acquired and at the rate of 15% per annum after expiry of period of one year till payment of additional compensation into the Court. The appeals, cross appeals and cross-objections are accordingly, partly allowed, with no order as to costs. Office is directed to draw decree in terms of this judgment.

(patel)